

EXHIBIT G

PIZZOTTI & JARNAGIN (925) 416-1800

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MIGUEL ORTEGA, BENJAMIN
ORTEGA, A Minor, By and through
his Guardian Ad Litem, ANA ROSA
ORTEGA,

Plaintiffs,

vs.

Case No. C07-02659 JCS

CITY OF OAKLAND, OAKLAND POLICE
DEPARTMENT, WAYNE TUCKER, In His
Capacity as the Police Chief of the
City of Oakland, RAMON J. ALCANTAR,
Individually and in his capacity as
a Police Officer for the City of
Oakland, DOES 1 THROUGH 200,

A rectangular stamp with the word "COPY" in a bold, sans-serif font. The stamp is slightly tilted and has a small "cc" in a circle to the left of the word.

Defendants.

DEPOSITION OF MIGUEL ORTEGA

Wednesday, February 20th, 2008

Taken before Cathryn Bauer
Certified Shorthand Reporter
For the State of California
C.S.R. License No. 12676



Pizzotti & Jarnagin

Certified Shorthand Reporters
A Professional Corporation

(925) 416-1800 ♦ FAX (925) 416-0971

1

MIGUEL ORTEGA  February 20, 2008

PIZZOTTI & JARNAGIN (925) 416-1800

1

INDEX OF EXAMINATIONS

2

3

EXAMINATION BY:

PAGE

4

Charles Vose

5

5

James Higa

68

6

7

8

9

(No exhibits were marked.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

PIZZOTTI & JARNAGIN (925) 416-1800

1

DEPOSITION OF MIGUEL ORTEGA

2

3

4

5

6

7

8

9

10

11

12

13

14

APPEARANCES

15

16

17

18

19

20

21

22

23

24

25

Pursuant to Notice of Taking Deposition, and on
Wednesday, February 20, 2007, commencing at the hour of
1:09 o'clock p.m. at the Office of the City Attorney, One
Frank Ogawa Plaza, 6th Floor, Oakland, California 94612,
before CATHRYN BAUER, a duly qualified Certified Shorthand
Reporter of the State of California, personally appeared
MIGUEL ORTEGA, produced as a witness in the above-entitled
action, who, being duly sworn, was thereupon examined as a
witness in said action.

CATHERINE R. DOUAT, Attorney at Law, The Accidental
Lawyer, 901 Clay Street, Oakland, California 94608, (510)
465-1500, was present on behalf of the plaintiffs, Miguel
Ortiz, et al.

CHARLES VOSE, Attorney at Law, Office of the City
Attorney, One Frank Ogawa Plaza, 6th Floor, Oakland,
California 94612, (510) 238-2961, was present on behalf of
the defendants, the City of Oakland, Oakland Police
Department, Wayne Tucker, and Officer Ortiz.

JAMES Y. HIGA, Attorney at Law, Burnham Brown, 1901
Harrison Street, 11th Floor, Oakland, California

PIZZOTTI & JARNAGIN (925) 416-1800

1 94612-3501, (510) 835-6666 was present on behalf of the
2 defendant, Officer Alcantar.

3

4 Also present: Debora Marchevsky, Spanish-language
5 interpreter.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

PIZZOTTI & JARNAGIN (925) 416-1800

1 A Only when this happened, what did happen, just
2 when he was on his way to McDonald's.

3 Q Do you remember what time it was when your
4 brother Benjamin went to McDonald's?

5 A No.

6 Q Did you accompany him to McDonald's?

7 A No.

8 Q Okay. Do you know if anyone else accompanied
9 him to McDonald's?

10 A I'm not sure.

11 Q Okay. When your brother Benjamin went to
12 McDonald's, what did you do?

13 A I was there with my friends at the house.

14 Q And what were you doing with your friends at the
15 house?

16 A We were just talking.

17 Q Were you inside or outside of the house?

18 A Outside in the yard.

19 Q Okay. Was anyone drinking any alcohol?

20 A No one.

21 Q And that includes you?

22 A No. I wasn't.

23 Q Okay. At any time while your brother Benjamin
24 went to McDonald's, did you leave the house?

25 A No.

PIZZOTTI & JARNAGIN (925) 416-1800

1 direction of downtown. But what they did is instead of
2 going straight, when my brother was walking, they
3 crossed -- cross, like this, kind of like facing the
4 traffic.

5 Q So they -- is what you're saying -- I am not
6 trying to put words in your mouth -- is what you're
7 saying is they drove from a direction coming from San
8 Leandro towards downtown? But at some point, they
9 crossed over into on coming traffic?

10 MS. DOUAT: Objection. Misstates his testimony.
11 You can answer.

12 THE WITNESS: Yes.

13 BY MR. VOSE:

14 Q Okay. How far away from -- well, let me ask it
15 this way.

16 Did you hear Benjamin and the officers talking
17 at all?

18 A I heard what the policemen told him.

19 Q Okay. When you first heard the officers say
20 something to Benjamin, how -- where was Benjamin?

21 A A few steps away from us.

22 Q Was he still in the -- was he still crossing the
23 street, or had he already finished crossing the street?

24 A He was crossing.

25 Q Okay. And how far from Benjamin were you?

PIZZOTTI & JARNAGIN (925) 416-1800

1 A I don't remember very well. . .

2 Q How far away from the officers were you?

3 A I don't remember.

4 Q Would you say that you were closer to the
5 driver's side of the patrol vehicle or the passenger side
6 of the patrol vehicle?

7 A On the side of the driver.

8 Q Okay.

9 A Or I don't remember very well, rather.

10 Q Okay. Do you remember if any of the windows of
11 the patrol vehicle were open?

12 A Yes. They were open.

13 Q Okay. And did -- and did you hear what the
14 officer said to your brother Benjamin?

15 A Yes.

16 Q And which officer was it that you heard say
17 something?

18 A I don't remember which one of the officers it
19 was that said something.

20 Q Do you remember if it was the driver or the
21 passenger?

22 A I'm not sure.

23 Q Okay. And what did the officer say to your
24 brother?

25 A He said, "Put the flag down before I shove it up

PIZZOTTI & JARNAGIN (925) 416-1800

1 your ass."

2 Q Okay. And how far away from Benjamin was the
3 officer when he said that?

4 A Close. Close. He was close.

5 Q And what did Benjamin do, if anything, when the
6 officer said that to him?

7 A No. I was the one that answered.

8 Q And did Benjamin put the flag down?

9 A Yes.

10 Q And where did he put the flag down?

11 A He just wrapped it and carried it in his hand.

12 Q Okay. You said a minute ago that he put the
13 flag down.

14 A What do you mean, like brought it down? I don't
15 know whether you were saying bring it down to the floor
16 where -- what do you mean by just bring it down?

17 Q Did Benjamin put the flag on the ground?

18 A No.

19 Q What did you say to the officer when the officer
20 said this to your brother?

21 A That why was it that he would say something like
22 that to my younger brother.

23 Q Did the officer say anything in response to you?

24 A He did not say anything.

25 Q What did Benjamin do after this conversation

PIZZOTTI & JARNAGIN (925) 416-1800

1 back and forth between you and the officer?

2 A I don't remember what he did.

3 Q Okay. Did -- at some point, did he join the
4 group of you that was on the corner?

5 A Yes.

6 Q Okay. And what did the officers do, if
7 anything, at this point?

8 A He followed us and told us to get off that
9 corner and followed us all the way down to the house.

10 Q Did he -- when the officer -- when Benjamin
11 joined you on the corner, did you remain at the corner in
12 this group? Or did you start -- or did you return to
13 your cousin's house on 62nd Avenue?

14 A Well, the policemen told us to leave, to go
15 home.

16 Q So when the officer told you to leave, that's
17 what you did?

18 A Well, he followed us until we entered the house.

19 Q So when the officer told you to leave, you --
20 you immediately started to leave?

21 A Yes because he was pacing us with the car.

22 Q So when you -- so you left, and your brother
23 Benjamin left?

24 A All of us.

25 Q So the entire group left?

PIZZOTTI & JARNAGIN (925) 416-1800

1 A Because my brother couldn't breathe very well,
2 and also, he was crying.

3 Q Did your brother say why he couldn't breathe
4 very well?

5 A He did not say why. He couldn't really speak.

6 Q Okay. How long were you in the back of the
7 patrol vehicle?

8 A I don't remember.

9 Q Was it more than 15 minutes?

10 A A good time. I don't remember.

11 Q Okay. Did the officer talk to you while you
12 were in the patrol vehicle?

13 A He said -- I don't remember whether it was
14 Alcantar or Ortiz. He said that it was our fault, that
15 they were going to call Immigration to come to that
16 house.

17 Q Did they say anything else to you?

18 A They said that -- that how old was I? I said
19 that I was 20. And he said, "So you're fine to be taken
20 to Santa Rita, then."

21 Q What did you say to the officers?

22 A I said to him that they should just let my
23 brother go and that they could take me to Santa Rita.

24 Q Did you say anything else to the officers?

25 A I don't remember very well.

PIZZOTTI & JARNAGIN (925) 416-1800

1 breathe, that's how you behave.

2 Q Did you observe any injuries on your brother?

3 A His whole neck was red.

4 Q When you say his whole neck, were -- what area
5 are you referring to?

6 A Everything. Everything was red.

7 Q Were there any cuts on his neck?

8 A I don't remember whether it was here or here.
9 He had something big.

10 Q When you say "something big," what was something
11 big?

12 A Like a bruise or a cut. I don't remember.

13 Q Did you see any blood?

14 A I don't remember.

15 Q Okay. Did you observe any other physical
16 injuries other than the front of the neck or the neck
17 area?

18 A His hands were swollen.

19 Q His hands were swollen?

20 A Yes.

21 Q Is that all the physical injuries that you
22 observed?

23 A I think so.

24 Q What injuries -- I know you mentioned a little
25 while ago that your back and then your ribs were hurt?

PIZZOTTI & JARNAGIN (925) 416-1800

1 A Yes. They hurt me, this area, on this side,
2 around here.

3 Q And your pointing to your -- your left rear
4 back?

5 A Like my back -- like my back and my ribs.

6 Q And that's on your left side?

7 A Yes.

8 Q Is that where you landed on the ground, was it
9 on your left side, if you remember?

10 A I don't know how it was that they brought me
11 down, but they brought me down the steps.

12 Q Did you tell the officers that you were injured?

13 A I just told them that it was not necessary what
14 they were doing, that it was not.

15 Q Did you -- after you were released by the
16 officers, did you tell anyone that you were -- that you
17 were injured in this area that you've indicated, your
18 back and your ribs? Did you tell anyone about that?

19 A No.

20 Q Did you seek any kind of medical treatment for
21 those injuries?

22 A No. And still, when I get up in the morning, I
23 still feel a small pain there.

24 Q Okay. So you feel pain in that area in the
25 morning?

PIZZOTTI & JARNAGIN (925) 416-1800

1 A Yes.

2 Q Do you feel it -- how often do you feel pain
3 there?

4 A It depends. Like if it's cold, I feel that I
5 have more pain.

6 Q And do you have pain -- and how many times, say
7 -- in a week, how many times would you feel pain in that
8 area?

9 A Two or three times.

10 Q Okay. Do -- have you taken any kind of
11 medication for the pain?

12 A Advil, just that.

13 Q And how often do you take Advil?

14 A When it hurts, I just take two.

15 Q Did any police officer, either Officer Alcantar,
16 Officer Ortiz, or any other police officer that was there
17 make any statement about your race?

18 A I don't remember.

19 Q Now, in your complaint -- and I understand you,
20 of course, didn't write it; your attorneys did -- you
21 claim mental and emotional injuries as a result of this
22 incident.

23 MS. DOUAT: Objection. That may call for a
24 legal conclusion.

25 And you know as well as I do you can't ask about

PIZZOTTI & JARNAGIN (925) 416-1800

1 on International? Car traffic, I mean?

2 A More or less.

3 Q Would you -- were there other people,
4 pedestrians walking along International?

5 A A lot of people. There were a lot of people.

6 Q Do you know if there were a lot of people out
7 because they were celebrating Cinco de Mayo?

8 A Could be.

9 Q Did it -- were people like talking and yelling
10 as they were walking by?

11 A Yes.

12 Q Talking and yelling as if it was, you know, like
13 a celebration or festival or something?

14 A You could just hear the voices speaking.

15 Q And is that the entire time you were out there?

16 A Yes.

17 Q Now, you testified that Benjamin walked across
18 International with the green light; right? He could
19 walk?

20 A Yes. Yes, the pedestrian lights.

21 Q Okay. And -- and did you see a -- the police
22 car that you described, did you see it before the light
23 changed so that Benjamin could walk or after, if you
24 remember?

25 A I had already seen it.

PIZZOTTI & JARNAGIN (925) 416-1800

1 (The court reporter read back as requested.)

2 THE WITNESS: I don't remember.

3 BY MR. HIGA:

4 Q After you said what you said to the officers,
5 did -- did Benjamin come and join the group?

6 A Yes.

7 Q And I believe you testified that everybody
8 walked together back to the house on 62nd; is that right?

9 A Yes.

10 Q Did you -- if you know, did the entire group
11 walk completely together back to the house, or did some
12 people move ahead on the way back to the house?

13 A What I remember is that we all left together.
14 That's what I know.

15 Q Can you estimate how much time total the group
16 was at the corner?

17 A I don't remember.

18 Q But long enough to watch Benjamin walk back from
19 McDonald's and for all of the conversation with the
20 officers to happen; is that fair?

21 A What do you mean?

22 Q Well, you were out at the corner for a period of
23 time. That includes seeing Benjamin walking back from
24 McDonald's?

25 A Oh, yes.

PIZZOTTI & JARNAGIN (925) 416-1800

1 A That same day.

2 Q Okay. Was it -- was it at nighttime? When was
3 it?

4 A I don't remember.

5 Q Okay. Do you know where those pictures were
6 taken?

7 A I don't remember.

8 Q Do you know how many pictures were taken?

9 A Who knows? I don't know.

10 Q I think you testified earlier that you told the
11 officers that it was not necessary, what they were doing.
12 Do you remember that testimony?

13 A Yes.

14 Q Do you remember whether you told the officer
15 that?

16 A When they put that pistol on my head.

17 Q Okay. They put a gun to your head?

18 A An electric gun. Yes.

19 Q How did you know that?

20 A Because I felt a pistol. I felt the pistol, but
21 then with time, my cousin told me that it was one of
22 those electric ones.

23 Q You know, a little bit earlier, you talked about
24 having some pain in your back and I guess your -- it was
25 your back and your side; is that right?

PIZZOTTI & JARNAGIN (925) 416-1800

1 A Yes; I do remember that.

2 Q Can you describe what kind of pain that is? Is
3 it sharp? Is it dull?

4 A How can I put it? Like when someone hits you on
5 your hands and then you get a bruise and then you touch
6 it, that's more or less what it feels like.

7 Q If I were to say that -- okay. Strike that.
8 Sorry.

9 Does it -- does it throb, or is it constant
10 pain?

11 A Yes. Like it drops. Like, for instance, if I
12 move, I lay down and I move to one side, it's like then
13 the pain subsides a little bit.

14 Q Does it hurt when you sit here like this?

15 A Not -- right now, it does not hurt. But
16 that's -- that sometimes, I get pain. I do -- like, for
17 instance, this morning, I was having some pain.

18 Q You testified if it's cold --

19 A When it's cold, it does hurt.

20 Q You've never -- but you haven't gone to the
21 doctor for that?

22 A I have not gone. I want to go, but I don't know
23 whether.

24 Q Okay. I don't have any questions after that.

25 MR. VOSE: I think I'm done, too.

PIZZOTTI & JARNAGIN (925) 416-1800

1

2

REPORTER CERTIFICATE

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

I, Cathryn Bauer, hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth in the within-entitled case; that said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and a disinterested person, to the best of my ability and thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have
hereunto set my hand this
25th day of February, 2007.

Cathryn Bauer, RPR
Certified Shorthand Reporter
State of California
License No. 12676